

cf

#18



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FACSIMILE TRANSMITTAL

To: Group Director
Group Art Unit 3731

at (703) 872-9303

From: Craig Fieschko

Pages: 46

Date: September 11, 2003

Time: 8:35 A.M. CST

RESPOND TO Craig Fieschko (West Office)

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Email: cf@dewittross.com

Re: Our Ref. 78104.018

Your Ref. USSN 09/762,223

RE:

Serial No.: 09/762,223

Filing Date: May 7, 2001

Applicant(s): ANSON et al.

Title: **DEVICES AND METHODS FOR THE REPAIR OF ARTERIES**

Group Art Unit: 3731

Examiner: Milano, Michael J.

Atty. Docket: 78104.018

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/762,223
Filing Date: May 7, 2001
Applicant(s): ANSON et al.
Title:

Group Art Unit: 3731
Examiner: Milano, Michael J.
Atty. Docket: 78104.018

DEVICES AND METHODS FOR THE REPAIR OF ARTERIES

**COMBINED PETITION UNDER 37 CFR §1.181(a)(1)
TO WITHDRAW PREMATURE FINAL REJECTION /
TO WITHDRAW HOLDING OF ABANDONMENT
(37 CFR §1.113(a); MPEP 706.07(c))**

Group Director, Group 3731
Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

As per MPEP 1002.02(c)(3)(a), it is understood that this Petition is to be decided by the Group Director of Group Art Unit 3731. If this understanding is incorrect, please forward to the Office of Petitions or the other responsible entity.

1. Statement of Facts (37 CFR §1.181(b)): The facts are as follows.

The Office Action of February 19, 2000 stated in its Office Action Summary that it was a Final action. However, the Office Action otherwise lacked any mention of finality or a statement of why finality was being applied (e.g., none of the standard form paragraphs of MPEP 706.07 were provided). Additionally, certain claims were subjected to new rejections, but these claims had not undergone any amendment in the prior Response, nor were the rejections based on information recently submitted in an Information Disclosure Statement. See, for example, independent claim 51:

I certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office as follows:

3731	(703) 872-9303	9-11-03	Maurice Layton
Group Art Unit	Facsimile No.	Date	Signature

- (1) Independent claim 51 was filed in a Preliminary Amendment when the present application entered the National Stage.
- (2) Claim 51 was then subjected to a §112(1) rejection in the subsequent September 25, 2002 Office Action (owing to a lack of the claimed elements being labeled in the drawings)
- (3) The rejection was addressed by drawing amendments submitted in a December 24, 2002 Response. Claim 51 was not itself amended.
- (4) The (Final) Office Action of February 19, 2003 then set forth a new §102(b) rejection of claim 51 in view of U.S. Patent 4,485,816 to *Krumme* (which was a newly-cited reference cited by the Examiner, not by the Applicant).

In other words, the February 19, 2003 (Final) Office Action was one "where the examiner introduce[d] a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)" – and thus the February 19, 2003 Office Action should not have been made final under MPEP 706.07(a). This, coupled with the mention of finality only in the Office Action Summary (i.e., owing to the lack of customary paragraphs relating to finality), made it appear that the checking of the "final" box in the February 19, 2003 Office Action Summary was plain error.

The Applicant then filed a Response on August 18, 2003, which noted the foregoing issues relating to finality at Section 1, page 7 and requested that the February 19, 2003 Office Action be treated as nonfinal.¹ The Response otherwise made a complete Response to all outstanding matters. However, a September 4, 2003 Advisory Action was then received which did not address the issue of finality, and which refused to enter or otherwise consider the amendments of the August 18, 2003 Response on the grounds that they raised new issues.

It is understood that if the finality of the February 19, 2003 Office Action is maintained, then the present application effectively stands abandoned for failure to obtain

¹ The delay in filing the Response – which was filed with a 3-month extension – was unavoidable owing to reorganization/refinancing issues occurring over the period in question, requiring that the application remain untouched.

allowability (or otherwise file for continued examination) prior to August 19, 2003 (6 months from the date of the February 19, 2003 Office Action). Thus, this Petition is also effectively a Petition to Withdraw Holding of Abandonment (though no official notice of a holding of abandonment has been received yet). On the other hand, if the finality of the February 19, 2003 Office Action is withdrawn, the application will still be pending, and will be awaiting entry and consideration of the August 18, 2003 Response.

It is therefore requested that the finality of the February 19, 2003 Office Action be withdrawn; and that the September 4, 2003 Advisory Action be withdrawn and replaced (or otherwise supplemented) with an Office Action which fully considers the August 18, 2003 Response, and sets a new period for Response. Such relief is believed to be justified because the rejections of the February 19, 2003 Office Action should not have been made final in accordance with the standards of MPEP 706.07(a); and this fact, coupled with the unconventional presentation of finality (i.e., the lack of any mention of finality save for in the February 19, 2003 Office Action Summary), led to a fair question of whether the indication of finality in the February 19, 2003 Office Action Summary was plain error.

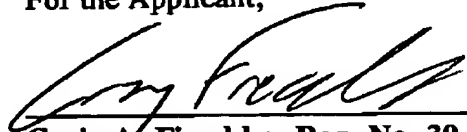
It is understood that as per 37 CFR §1.181(f), this Petition "*may* be dismissed as untimely" owing to the passage of time since the February 19, 2003 Office Action. However, since this language makes dismissal permissive, rather than mandatory, kindly grant the relief requested above. Because the finality was contrary to MPEP 706.07(a), and the specification of final status was irregular and appeared erroneous, it was believed that the February 19, 2003 Office Action would not be treated as final (as requested in the August 18, 2003 Response). In this respect, this Petition is promptly filed insofar as it requests relief from the September 4, 2003 Advisory Action.

As per 37 CFR §1.181(b), any facts requiring proof are set out in the form of declarations or exhibits accompanying this Petition.

In Closing

If any questions regarding this petition or the application arise, please contact the undersigned attorney. Telephone calls are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



Craig A. Fieschko, Reg. No. 39,668
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Telephone: (608) 828-0722
Facsimile: (608) 831-2106

ATTACHMENTS:

- Pages 1-2, February 2, 2001 Preliminary Amendment
- September 25, 2002 Office Action
- Pages 1-9, December 24, 2002 Response
- February 19, 2003 Office Action
- Pages 1 & 7, August 18, 2003 Response
- September 4, 2003 Advisory Action

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): ANSON et al. Atty. Docket: 78104.018
Title: DEVICES AND METHODS FOR THE REPAIR OF ARTERIES

PRELIMINARY AMENDMENT (37 CFR §1.121/MPEP 714.09)

Box: New Patent Application with Non-Fee Amendment
Assistant Commissioner for Patents
Washington, D.C. 20231

To the Commissioner:

Prior to calculation of the filing fee and examination of the above-referenced application on the merits, please amend its claims (as amended under PCT Article 34) as follows:

AMENDMENTSIn the Specification:

At page 1 line 4 insert --Field of the Invention--

At page 1 line 9 insert --Background of the Invention--

At page 1 line 26 insert --Summary of the Invention--

At page 11 line 25 insert --Summary of the Drawings--

At page 12 line 27 insert --Detailed Description of Preferred Embodiments of the Invention--

In the Claims:

Cancel claims 1-50 and add new claims 51-70 as follows:

I certify that this correspondence is being deposited with the United States Postal Service as Express Mail - Post Office to Addressee, in an envelope addressed to: Box: PCT, Assistant Commissioner for Patents, Washington, D.C. 20231.

EL 674299750 US
Express Mail Label No.02 February 2001
Date of DepositJ. Diamond
Signature

51. A fixator for retaining a graft on an artery comprising:
- a. a plurality of first parts for contacting the graft when the device is pierced radially through the graft and the artery wall,
 - b. at least one second part for contacting the artery when the device is pierced radially through the graft and the artery wall, and
 - c. a resilient member connecting the first and second parts,
- wherein:
- (1) the resilient member biases the first and second parts towards each other into a retaining configuration such that in use the artery and the graft are retained together between the first and second parts of the device, and
 - (2) the first and second parts are moveable into an open configuration in which they are further apart than in the retaining configuration to enable the device to be conveyed along an artery.
52. The fixator of claim 51 wherein in the open configuration the first parts, the resilient member, and the second part are all at least substantially disposed along a common axis.
53. The fixator of claim 51 wherein in the retaining configuration at least one of the first and second parts forms an arcuate shape.
54. The fixator of claim 51 wherein at least a portion of at least one of the first and second parts is sharpened to enable said part to pierce a graft and an artery.
55. The fixator of claim 54 wherein both the first and the second parts are so sharpened.
56. The fixator of claim 51 wherein the device is formed from a wire.
57. The fixator of claim 51 wherein the device is formed from a shape memory alloy.

doctored

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,223	05/07/2001	Antony Walter Anson	78014.018	2854

7590

09/25/2002

Dewitt Ross & Stevens
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Madison, WI 53717-1914

EXAMINER

ROBERTS, PAUL A

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/762,223

Applicant(s)

ANSON ET AL.

Examiner

Paul A Roberts

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-70 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 51-69 is/are rejected.
- 7) ☒ Claim(s) 70 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/07/2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9, 10, 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Art Unit: 3731

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the 1st and 2nd part, locating member, supporting member, and elongated member must be shown and labeled or the feature(s) canceled from the claim(s). No new matter should be entered.
2. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 51-66 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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Art Unit: 3731

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6. In order to enable one of ordinary skilled in the art to build this invention, all objects in which the claims refer must be clearly described in the specification and drawn in the figures.
7. In claims 51-61 the applicant failed to label or describe to what the 1st and 2nd parts refer.
8. In claim 62 the applicant failed to label or describe to what the locating member and supporting member refer.
9. Claims 63-66 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure, which is not enabling. The description of the elongate members is critical to the practice of the invention, but not included in the claim(s) and not enabled by the specification or drawings.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 55 and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
12. In claim 55, the applicant states "...parts are so sharpened." The phrase "so" requires a depending clause to change the normal intrinsic state of the noun being modified. For example, "... so sharpened as to allow them to puncture an artery." As written the claim is indefinite and is therefore rejected under 35 USC 112 second paragraph. An exception to this rule is when the word being modified has different levels in which it can be modified, like "the desk was so big." The use of the modifier for words like, "free, sharpened, full" is illogical and renders the claim indefinite.

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13. Claim 62 is rejected under 35 U.S.C. 112, second paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. .

14. The applicant describes a helical structure in part C, yet there is no mention of a helical structure in the specification and no support in the diagrams to substantiate the claimed subject matter.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 68 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green, 6190401.

17. Regarding claim 68, the elongate member of the Green device has the capability of being in an open configuration, figure 14, and a retaining configuration, figure 1, where in the 1st and 2nd parts are closely spaced, wherein the device is biased towards the closed configuration. Further, the elongate member extends between the first and second element and is connected between the first and second ends. The modified Green device could be inserted into a graft-bearing artery to pierce the graft and artery. Once the device, part 1, is completely pushed through the artery, the graft and artery would be maintained between the first and second part where in the device would be in the closed position.

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18. Regarding claim 69, the fixator has 2 parts that are sharpened, allowing it to pierce an artery and a graft (see figure 14).

Figure 10

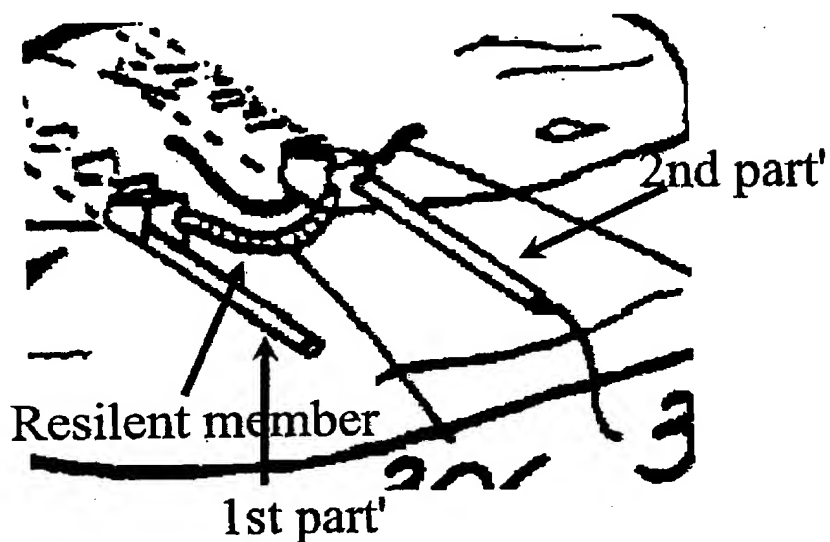
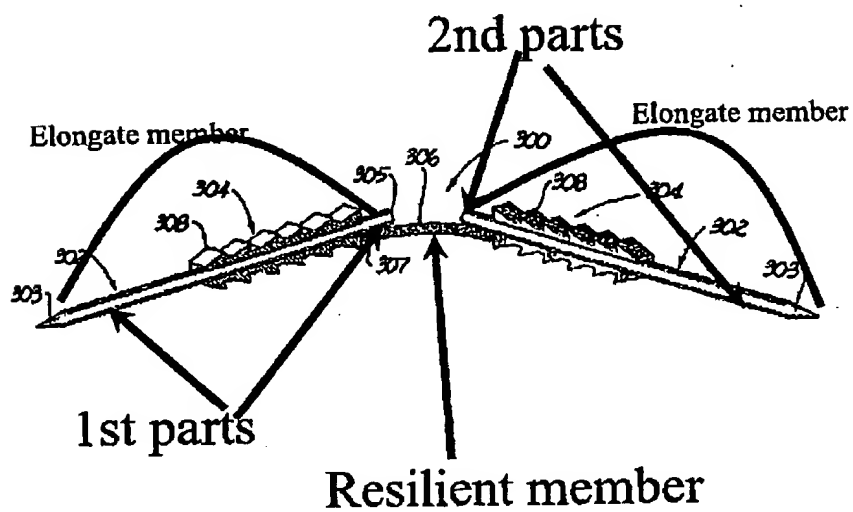


Figure 14



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Allowable Subject Matter

19. Claim 70 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
20. The following is an examiner's statement of reasons for allowance: The prior art does not teach a fixator with the limitations of claim 68 and biasing element.
21. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- | | |
|---------|--|
| 6071292 | The device has a very similar structure to the second embodiment of the invention. |
| 5540716 | A surgical fastener |
| 5984949 | A surgical fastener |
| 5263973 | Surgical stapling method and apparatus |
| 4317451 | Plastic surgical staple |

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Paul Roberts
September 17, 2002

MICHAEL J. MILANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Notice of References Cited

Application/Control No.

09/762,223

Applicant(s)/Patent Under
Reexamination
ANSON ET AL.

Examiner

Paul A Roberts

Art Unit

3731

Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,190,401	02-2001	Green et al.	227/902
	B	US-6,273,903	08-2001	Wilk, Peter J.	606/142
	C	US-5,413,584	05-1995	Schulze, Dale	227/19
	D	US-4,275,813	06-1981	Noiles, Douglas G.	206/339
	E	US-5,263,973	11-1993	Cook, Melvin S.	606/215
	F	US-5,984,949	11-1999	Levin, John M.	606/216
	G	US-5,540,716	07-1996	Hlavacek, Robert A.	227/902
	H	US-6,071,292	06-2000	Makower et al.	606/139
	I	US-4,317,451	03-1982	Cerwin et al.	227/19
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use as many sheets as necessary)			<i>Complete if Known</i>		
			Application Number	09/762,223	
			Filing Date	May 7, 2001	
			First Named Inventor	Anthony Walter Anson	
			Group Art Unit	3736	
			Examiner Name	Unknown	
Sheet	1	of	1	Attorney Docket Number	78104.018

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U.S. PATENT DOCUMENTS

Exam. Initials	Cite No.	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document (MM-DD-YYYY)	Location of Relevant Matter (if unspecified, assume entire document is relevant)
		Number	Kind Code (if known)			
PR		5,573,543	A	Akopov et al.	11-12-1996	
PR		5,618,311	A	Gryskiewicz	04-08-1997	
PR		5,720,755	A	Dakov	02-24-1998	
PR		5,941,890	A	Vozgale et al.	08-24-1999	

FOREIGN PATENT DOCUMENTS

Exam. Initials	Cite No.	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document (MM-DD-YYYY)	Location of Relevant Matter (if unspecified, assume entire document is relevant)	Trans.
		Office	Number	Kind Code (if known)				
PR		FR	2 725 126	A1	Christian	05.04.1996		10
PR		DE	197 11 288	A1	Wurster	01.10.1998		10

Examiner Signature	<i>Paul H. [Signature]</i>	Date Considered	August 19
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09/762223

JCO2 Rec'd PCT PTO

02 FEB 2001

f 2

FORM PTO-1449 U.S. Dept. of Commerce Patent and Trademark Office Information Disclosure Statement by Applicant 37 CFR 1.98(b)	Docket No.: 78104.018	Serial No:
	Applicant: ANSON et al.	
	Filing Date: <u>Simultaneously</u> <u>Herewith</u>	Group: 3731

U.S. PATENT DOCUMENTS

Exam Intl	Patent Number	Issue Date	Patentee	Class	Subclass	Filing Date
PR	3,527,223	09/08/1970	Shen			
PR	3,716,058	02/13/1973	Tanner			
PR	4,590,938	05/27/1986	Segura et al.			
PR	4,921,484	05/01/1990	Hillstead			
PR	5,042,707	08/27/1991	Taheri			
PR	5,192,291	03/09/1993	Pannek			
PR	5,222,971	06/29/1993	Willard			
PR	5,330,490	07/19/1994	Wilk			
PR	5,531,760	07/02/1996	Alwafaie			
PR	5,618,311	04/08/1997	Gryskiewicz			
PR	5,632,746	05/27/1997	Pyka			

FOREIGN PATENT OR PUBLISHED FOREIGN PATENT APPLICATION

	Document Number	Publ. Date	Country or Patent Office	Class	Subclass	Transl.	
						Yes	No
PR	WO 92/05828	16.04.92	PCT				X
PR	FR 2,725,126	04/05/1996	France				X
PR	FR 2,746,292	09/26/1997	France				X
PR	EP 0820729	01/28/1998	Europe				X

09/762223

JCL
PageRec'd PCT/PTO
2 of 2

05 FEB 2001

OTHER DOCUMENTS (Including Author, Title, Date, Pages, etc.)	
Examiner:	Date Considered: 8/27

Examiner: Initial citation considered. Draw line through citation if not in conformance and not considered.
Include copy of this form with next communication to applicant.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/762,223
Filing Date: May 7, 2001
Applicant(s): ANSON et al.
Title:

Group Art Unit: 3731
Examiner: Roberts, Paul A.
Atty. Docket: 78104.018
DEVICES AND METHODS FOR THE REPAIR OF ARTERIES

RESPONSE TO SEPTEMBER 25, 2002 OFFICE ACTION
(37 CFR §1.111)

Box: Non-Fee Amendment
Assistant Commissioner for Patents
Washington, D.C. 20231

In Response to the Office Action of September 25, 2002, the period for Response being set to expire on December 26, 2002 (December 25 being a holiday), reconsideration of the objections and/or rejections and further examination of the application are requested in view of the following amendments and comments.

AMENDMENTS

Please amend the application as follows:

Drawing Changes (Other than Those Requested on Form PTO-948) (37 CFR §1.121(d)):

Pursuant to 37 CFR §1.121(d) and MPEP 608.02(p), (q), (r), and (v), a separate paper entitled *Submission of Proposed Drawing Amendment for Approval by Examiner* (MPEP 608.02(r)) has been transmitted simultaneously with this Response. Attached to the *Submission of Proposed Drawing Amendment* is a print or pen-and-ink sketch showing proposed drawing changes in red ink or otherwise highlighted, in accordance with MPEP §608.02(v). A copy of the sketch is also appended to this Response for your convenience.

I certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

12-24-02
Date of Deposit

12-24-02
Date of Signature

Maureen Layton
Signature

In the Specification (37 CFR §1.121(b)): The changes in each paragraph's content are indicated in the accompanying Amendment Sheet illustrating the paragraph and marking the changes made therein.

- Please delete the paragraph situated at page 12 lines 28-30 of the specification and insert the following replacement paragraph in its place (with support for the amendment being found in claims 51 and 68, as well as in Figs. 1-3 in particular):

Referring to the drawings, Fig. 1. illustrates a plan view of a wire-form fixator [2], connected by welding in the central area. The end termination of the fixator are sharpened and shown in the unconstrained (retaining) configuration. **The fixator [2], which is shown in its retaining configuration, includes elongated members [300] each extending between first parts [302] and second parts [304], with the first parts [302] and second parts [304] being connected by resilient members [306].**

- Please delete the paragraph situated at page 14 lines 21-24 of the specification and insert the following replacement paragraph in its place (with support for the amendment being found in claim 62, as well as in Fig. 10 in particular):

The stabiliser (Fig. 10) consists of two elastically deformable thin strips of metal (47) which, when unconstrained form a nominally circular shape (46). The two strips are riveted together (45) at the leading edge and are riveted onto a short metal tube (49) which has been arranged to retract within a catheter sheath (48). **The metal tube (49) serves as a locating member for locating the device with respect to a catheter, and the distal portions of the strips (46) define support members (320) for supporting the catheter on the inner wall of an artery or graft. The proximal portions of the strips (46) then serve as resilient members (322) which connect the locating member (49) and the support members (320), with the resilient members (322) biasing the support members (320) toward the artery wall. As the resilient members (322) bias the support members (320) toward the artery wall, they reduce the distance between the end of each support member (322) and its resilient member (322), thereby causing the support member (322) to bow radially outward with respect to the locating member (49).**

- Please delete the paragraph situated at page 16 lines 23-26 of the specification and insert the following replacement paragraph in its place (with support for the amendment being found in claim 62, as well as in Fig. 13 in particular):

Fig. 13 illustrates methods of forming the distal end of a dilator (110-112) and shows schematically, a single wire-form dilator element (107-109) and a wire-form deployment and envelope expansion mechanism in the form of a pulling wire (119) and a pushing/pulling tube (120). Each dilator element includes a dilating member (107) having a resilient member (350) connecting the dilating member (107) to a locating member (108) and biasing the dilating member (107) towards and into contact with the inner artery wall, whereby in use the resilient members (350) cause the dilating members (107) to apply outward pressure to the inner artery wall to dilate the artery. The pulling wire (119) serves as a means for reducing the distance between each dilating member (107) and each locating member (108), thereby causing the central section of said dilating member (107) to bow radially outward with respect to the locating member (108) in order to apply increased outward pressure on the inner wall of the artery when the device is in use.

- Please insert the following Abstract, which is also provided on a separate sheet appended to this Response.

A device for retaining a graft on an artery, comprising a first part for contacting the graft and a second part for contacting the artery when the device is pierced radially through the graft and the artery wall, the first and second parts being connected by a resilient member, wherein the resilient member biases the first and second parts towards each other into a retaining configuration such that in use the artery and the graft are retained together between the first and second parts of the device, and wherein the first and second parts are moveable into an open configuration in which they are further apart than in the retaining configuration to enable the device to be conveyed along an artery.

In the Claims (37 CFR §1.121(c)): Please amend the claims as follows. Any changes in the claims' content are indicated in the accompanying Amendment Sheet illustrating the amended claims and marking the changes made therein.

- Please amend claim 55 as follows to remedy the 35 USC §112(2) rejection, with support for the amendment being found particularly in claim 54:

55. **[AMENDED]** The fixator of claim 54 wherein at least a portion of both the first and second parts is sharpened to enable said parts to pierce a graft and an artery.
- Please amend claim 62 as follows to remedy the 35 USC §112 rejection:

62. **[AMENDED]** The fixator of claim 51 included within a kit, the kit further comprising at least one of:
 - a. a device for supporting a catheter within an artery or arterial graft, the device including:
 - (1) a locating member for locating the device with respect to the catheter,
 - (2) a plurality of support members for supporting the catheter on the inner wall of the artery or graft,
 - (3) a resilient member connecting the locating member and the support members, wherein the resilient member biases the support members towards the artery wall,
 - (4) means for reducing the distance between the end of each support member distal to the locating member and the end of said support member proximate the locating member, thereby causing the central section of said support member to bow radially outward with respect to the locating member;

- b. a device for dilating an artery when delivered translumenally to a locus of an artery by means of a catheter, the device including:
- (1) a locating member for locating the device with respect to the catheter;
 - (2) a plurality of dilating members,
 - (3) a resilient member connecting the dilating members to the locating member and biasing the dilating member towards and into contact with the inner artery wall, whereby in use the resilient members cause the dilating members to apply outward pressure to the inner artery wall and dilate the artery,
 - (4) means for reducing the distance between the end of each dilating member distal to the locating member and the end of said dilating member proximate the locating member, thereby causing the central section of said dilating member to bow radially outward with respect to the locating member in order to apply increased outward pressure on the inner wall of the artery when the device is in use.

- Please amend claims 68 and 69 as follows to conform their terminology to that of claim 51:

68. **[AMENDED]** A fixator for retaining a graft on an artery, the fixator comprising elongated members:
- a. extending between first and second parts, and
 - b. being connected between their first and second parts,
- wherein each elongated member moves between:
- (1) an open configuration wherein the elongated member is at least substantially oriented along a linear axis with its first and second parts distantly spaced, and
 - (2) a retaining configuration wherein the elongated member is bent so that its first and second parts are closely spaced,
- whereby the elongated members of the fixator may in the open configuration be inserted into the circumference of a graft-bearing artery to pierce the graft and artery, and may then be moved to the retaining configuration to situate the graft and artery between the first and second parts.
69. **[AMENDED]** The fixator of claim 68 wherein at least one of the first and second parts of each of the elongated members is sharpened, whereby it may more easily pierce a graft and an artery.

REMARKS**1. Sections 1 and 2: Objections to the Drawings**

The objections to the drawings are addressed by the proposed drawing amendment discussed above, in accompaniment with the amendments to the specification. All claimed features are now clearly indicated. Note that claim 68 has been amended so that the parts (formerly "ends") are assigned reference numerals by the amendments to the specification.

2. Section 3: Abstract

The abstract from the PCT Publication of the priority application (WO 00/07506) is added by the amendments.

3. Sections 4-9 of the Office Action: Rejection of Claims 51-66 under 35 USC §112(1)

Kindly reconsider these rejections. It is submitted that the issue is not one of enablement, i.e., whether the specification describes the invention in such terms that one skilled in the art *can make and use* the claimed invention, since the specification contains such detail as per MPEP 2164. Rather, the rejections in issue would be more properly posed as objections under 37 CFR §1.75(d)(1) (lack of correspondence between claim terminology and specification), i.e., the issue is basically one of clarity. The specification and drawings have now been amended so that examples of the claimed features are more clearly indicated in the specification.

4. Sections 10-14 of the Office Action: Rejection of Claims 55 and 62 under 35 USC §112(1)

The rejection of claim 55 should be obviated by the accompanying amendment. Regarding claim 62, the claimed structure is discussed (for example) at page 6 line 18 onward; however, to minimize difficulties in conforming the claims, drawing, and specification, the structure in issue has been removed from claim 62.

5. Sections 15-18 of the Office Action: Rejection of Claims 68-69 under 35 USC §103(a) in view of U.S. Patent 6,190,401 to Green

Reconsideration of the rejections is requested.¹ Initially, note that claim 68 recites elongated members (in the plural). If *Green* is regarded as having a pair of elongated members 302/303/308/304 (as shown in the Examiner's second drawing in the Office Action), *Green* neither discloses nor suggests bending each of the elongated members as recited in claim 68; rather, each elongated member stays straight, with the bioresorbable connection between them (see column 8 line 62 onward) being bent. Note that the Fig. 10 apparatus is shown "spread" merely because the bioresorbable connecting material is not rigid, and that the apparatus is not in fact bent when deployed: as depicted in Figs. 7-9 and described in the specification, the *Green* apparatus is driven forward in a U-shaped form, see Figs. 13 and 14, with each "arm" being in parallel and being driven by needle 302, see Figs. 13 and 15, and the apparatus remains in this configuration when deployed, without the spacing between the arms being varied. After deployment, the bioresorbable connection between the arms dissolves while the arms remain in tissue as retaining spikes (see, e.g., column 10 lines 55-60). Thus, *Green* has no teaching or suggestion that a fixator may include an elongated member (much less multiple elongated members) wherein each elongated member is bent from a linear form to a form wherein its ends are closely spaced, such that each elongated member retains a graft and artery together. *Green* is simply a rather conventional surgical staple having linear arms which remain in linear form when installed in tissue, but the "bridge" of the staple is made of dissolving (and flexible) material. Consider that this flexible material cannot maintain the arms in a closely spaced condition (and in fact it cannot hold the arms in any fixed location owing to its flexibility), and thus there is no way to use the *Green* apparatus to fix an artery and graft in the manner claimed, nor is there any apparent reason why one would be motivated to modify the *Green* apparatus to provide this capability. In

¹ Note that the amendments to claim 68 to change "ends" to "parts" do not effect any substantive change to the scope of the claim, and rather are made to conform the language of claims 51 and 68 and ensure that all claimed features are denoted in the drawings.

contrast, look to Figs. 1 and 3 of the Applicant's drawings for illustration of the readily deployable, self-retaining aspects of an exemplary version of the claimed invention.

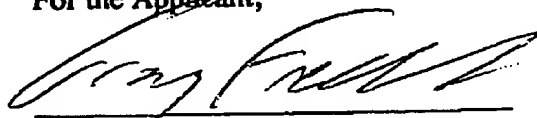
6. Sections 19-21 of the Office Action: Allowance of Claim 70

The indication that claim 70 is allowable is noted and appreciated. The claim is not rewritten in independent form because it is believed that the current independent claims are allowable for the reasons noted above.

7. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

For the Applicant,



Craig A. Fieschko, Reg. No. 39,668
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ATTACHMENTS:

- Amendment Sheet ("Marked-Up" Copy) Showing Changes to Application
- Submission of Proposed Drawing Amendment for Approval by Examiner
- New Abstract

Office Action Summary

Application No.

09/762,223

Applicant(s)

ANSON ET AL.

Examiner

Paul A Roberts

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-70 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-61 and 63-70 is/are rejected.
- 7) ☒ Claim(s) 62 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other.

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DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on two applications filed in GB and on 08/03/98. It is noted, however, that applicant has not filed a certified copy of the GB patent application as required by 35 U.S.C. 119(b).
2. This application filed under former 37 CFR 1.62 lacks the necessary reference to the prior application. A statement reading "This is a continuation of Application No. 05/07/2001, filed 08/03/1998." should be entered following the title of the invention or as the first sentence of the specification. Also, the current status of the parent nonprovisional application(s) should be included.

Drawings

3. The corrected or substitute drawings were received on 12/31/02. These drawings are accepted by the examiner.

Specification

4. Corrections to the specification were received on 12/30/02. The corrections are accepted by the examiner.
5. Addition of the abstract was received on 12/30/02. The abstract is accepted by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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6. Claims 51-63 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The resilient member does not bias the first and second parts. Though the specification provides enablement and disclosure for this feature, both the specification and claim 51 incorrectly attribute the bending motion of the staple to the resilient member. The biasing force that changes the shape of the first and second parts is the stored, mechanical, spring-type energy in the first and second parts, not the resilient member.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 51, 53-61, 63-64, and 66-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Krumme, US 4,485,816.

7. Regarding claims 51 and 58, Krumme discloses a surgical staple containing a plurality of first and second parts connected by a resilient member wherein the first and second parts become close together in the retaining configuration and further apart in the open configuration. See first attached diagram.

8. Regarding claim 53, both the first and second parts form an arcuate shape.

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9. Regarding claim 54 & 55, the staple has sharpened end points on the first and second parts.
10. Regarding claim 56, the device is made from wire.
11. Regarding claim 57, the Krumme device is made of a shape memory alloy (abstract.)
12. Regarding claim 59, the fixator contains a plurality of parts that are integral.
13. Regarding claim 60, the device has two first and second parts.
14. Regarding claim 61, the surgical staple of figure 5b meets all the limitations of claims 51, 58, 60, and 61. The Krumme staple contains an equal number of first and second parts, a resilient member (the top section of the staple), and is held together by the attaching structure (the part that bonds each resilient structure together.)
15. Regarding claim 63, the Krumme fixator can hold a graft.
16. Regarding claim 64, the Krumme device illustrated in figure 5a contains two elongated members (one elongated member has been painted gray in the attached diagram, the other one is white.) The elongated members have an open and closed configuration. In the open configuration, the first and second members are spaced; in the closed configuration, the first and second members are closer together.
17. Regarding claim 66, the ends of the first and second parts are sharpened.
18. Regarding claim 67, the elongated members extend entirely between the first and second parts.
19. Regarding claim 68 and 69, the Krumme device discloses all the limitations of claims 68 and 69 which were described in the rejections of claims 51, 53-61, 63-64, and 66-67.

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20. Regarding claim 70, the Krumme device can be normally biased in either configuration, open or closed, depending on the temperature in which it is stored.

21. Claims 51, 52, 64, and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by Shein, US 3,527,2234. As shown in figure 1, Shein discloses a surgical device containing a plurality of first and second parts connected by a resilient member wherein the first and second parts become close together in the retaining configuration and further apart in the open configuration. Additionally, the Shein device contains two elongated members. The elongated members have and open and closed configuration. In the open configuration, the first and second members are spaced; in the closed configuration, the first and second members are closer together. The Shein device also discloses that the elongated members are aligned in a common axis in the closed position.

Allowable Subject Matter

Claim 62 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:
The prior art does not teach a fixator as claimed in claim 51, contained in a kit wherein said kit contains all of the elements of claim 62.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents use shape memory material to cause a shape change in a tissue anchor. US 6,200,330; 5,586,983; 6,113,611; 5,219,358; 6,447,524.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A Roberts whose telephone number is (703) 305-7558. The examiner can normally be reached on 7:30-4:00.

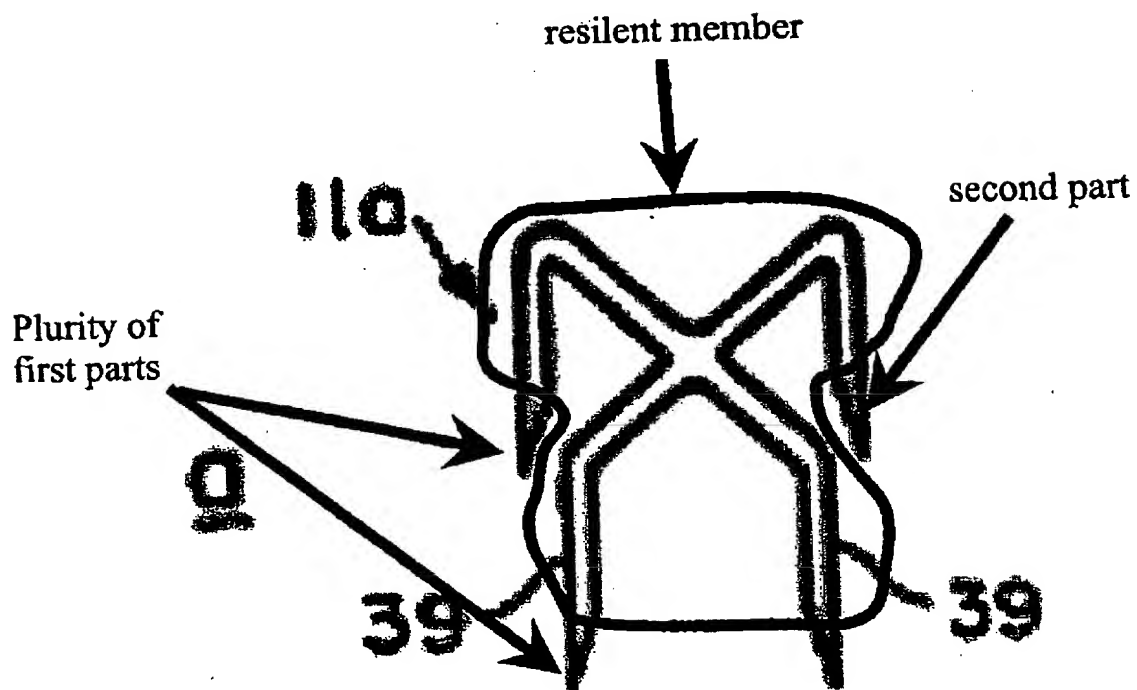
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Paul Roberts
February 10, 2003

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Notice of References Cited	Application/Control No. 09/762,223	Applicant(s)/Patent Under Reexamination ANSON ET AL.	
	Examiner Paul A Roberts	Art Unit 3731	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-5,586,983	12-1998	Sanders et al.	606/61
	B	US-6,113,611	09-2000	Allen et al.	606/151
	C	US-5,219,358	06-1993	Bendel et al.	606/222
	D	US-4,485,816	12-1984	Krumme, John F.	606/219
	E	US-6,200,330	03-2001	Benderev et al.	606/232
	F	US-6,447,524	09-2002	Knodel et al.	606/151
	G	US-6,287,315	09-2001	Wijeratne et al.	606/108
	H	US-6,451,034	09-2002	Gifford et al.	606/153
	I	US-6,485,496	11-2002	Suyker et al.	606/153
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
 Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

09/762223

JC02 Rec'd PCT/PTO 02 FEB 2001 f 2

FORM PTO-1449 U.S. Dept. of Commerce Patent and Trademark Office Information Disclosure Statement by Applicant 37 CFR 1.98(b)	Docket No.: 78104.018	Serial No.:
	Applicant: ANSON et al.	
	Filing Date: <u>Simultaneously</u> <u>Herewith</u>	Group: <u>3731</u>

U.S. PATENT DOCUMENTS

Exam Intl	Patent Number	Issue Date	Patentee	Class	Subclass	Filing Date
PR	3,527,223	09/08/1970	Shen			
PR	3,716,058	02/13/1973	Tanner			
PR	4,590,938	05/27/1986	Segura et al.			
PR	4,921,484	05/01/1990	Hillstead			
PR	5,042,707	08/27/1991	Taheri			
PR	5,192,291	03/09/1993	Pannek			
PR	5,222,971	06/29/1993	Willard			
PR	5,330,490	07/19/1994	Wilk			
PR	5,531,760	07/02/1996	Alwafaie			
PR	5,618,311	04/08/1997	Gryskiewicz			
PR	5,632,746	05/27/1997	Pyka			

FOREIGN PATENT OR PUBLISHED FOREIGN PATENT APPLICATION

	Document Number	Publ. Date	Country or Patent Office	Class	Subclass	Transl.	
						Yes	No
PR	WO 92/05828	16.04.92	PCT				X
PR	FR 2,725,126	04/05/1996	France				X
PR	FR 2,746,292	09/26/1997	France				X
PR	EP 0820729	01/28/1998	Europe				X

09/762223

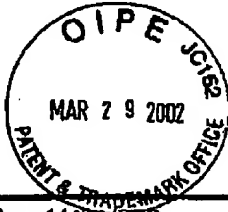
Page 2 Rec'd PCT/PTO 05 FEB 2001

OTHER DOCUMENTS (Including Author, Title, Date, Pages, etc.)

Examiner:

Date Considered:

Examiner: Initial citation considered. Draw line through citation if not in conformance and not considered.
Include copy of this form with next communication to applicant.



Substitute for form 1449A/PTO

**INFORMATION DISCLOSURE
STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

Sheet 1 of 1

Complete if Known

Application Number 09/762,223
 Filing Date May 7, 2001
 First Named Inventor Anthony Walter Anson
 Group Art Unit 3736
 Examiner Name Unknown
 Attorney Docket Number 78104.018

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TECHNOLOGY CENTER R3700

U.S. PATENT DOCUMENTS

Exam. Initials	Cite No.	U.S. Patent Document		Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document (MM-DD-YYYY)	Location of Relevant Matter (if unspecified, assume entire document is relevant)
		Number	Kind Code (if known)			
PR		5,573,543	A	Akopov et al.	11-12-1996	
PR		5,618,311	A	Gryskiewicz	04-08-1997	
PR		5,720,755	A	Dakov	02-24-1998	
PR		5,941,890	A	Voegelé et al.	08-24-1999	

FOREIGN PATENT DOCUMENTS

Exam. Initials	Cite No.	Foreign Patent Document			Name of Patentee or Applicant of Cited Document	Date of Publication of Cited Document (MM-DD-YYYY)	Location of Relevant Matter (if unspecified, assume entire document is relevant)	Trans.
		Office	Number	Kind Code (if known)				
PR		FR	2 725 126	A1	Christian	05.04.1996		10
PR		DE	197 11 288	A1	Wurster	01.10.1998		10

Examiner Signature

Date Considered

August 19

Notice of References Cited	Application/Control No. 09/762,223	Applicant(s)/Patent Under Reexamination ANSON ET AL.	
	Examiner Paul A Roberts	Art Unit 3731	Page 1 of 1

U.S. PATENT DOCUMENTS

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	A	US-5,586,983	12-1998	Sanders et al.	606/61
	B	US-6,113,611	09-2000	Allen et al.	606/151
	C	US-5,219,358	06-1993	Bendel et al.	606/222
	D	US-4,485,816	12-1984	Krumme, John F.	606/219
	E	US-6,200,330	03-2001	Benderev et al.	606/232
	F	US-6,447,524	09-2002	Knodel et al.	606/151
	G	US-6,287,315	09-2001	Wijeratne et al.	606/108
	H	US-6,451,034	09-2002	Gifford et al.	606/153
	I	US-6,485,496	11-2002	Suyker et al.	606/153
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(e).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/762,223
Filing Date: May 7, 2001
Applicant(s): ANSON et al.
Title:

Group Art Unit: 3731
Examiner: Milano, Michael J.
Atty. Docket: 78104.018
DEVICES AND METHODS FOR THE REPAIR OF ARTERIES

RESPONSE TO 19 FEBRUARY 2003 OFFICE ACTION
(37 CFR §1.111)

Mail Stop Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In Response to the Office Action of February 19, 2003, reconsideration of the objections and/or rejections and further examination of the application are requested.

Petition for Extension of Time to Respond

The period for response is hereby extended THREE month(s) to expire AUGUST 19, 2003 by this Petition for a Three-Month Extension of Time. A form PTO-2038 authorizing a charge for the petition fee of \$465 (37 CFR §1.17) accompanies this Response.

I certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office as follows:

3731	703-305-3590	8-18-03	<i>Kevin Lay</i>
Group Art Unit	Facsimile No.	Date	Signature

REMARKS**1. Status of the Office Action**

Please note that the Office Action Summary specifies that the Office Action is a Final one, but the detailed/substantive Office Action does not so state, nor is a basis for finality set forth as per MPEP 706.07(a). Additionally, finality is not believed to be properly applicable because the Office Action contains new rejections predicated on U.S. Patent 4,485,816 to *Krumme* which are not necessitated by prior amendments. Therefore, it is believed that the checking of the "Final" box on the Summary was an inadvertent error, and the Office Action has been treated as a nonfinal one for purposes of this Response. If this understanding is incorrect, kindly reissue the Office Action with a statement of the basis for finality, as per MPEP 706.07(a).

2. Sections 1-2 of the Office Action: Foreign Priority and Cross-Reference to Prior Application

Please note that the present filing was made as per 35 USC §365(a)/(b), not §365(c), and thus it is believed that the priority GB applications should be present in the USPTO's file (since these priority applications should have been transmitted from the PCT International Bureau as per MPEP 1828/1893.03(c)). Additionally, it is believed that no statement is needed at the outset of the application since the application does not rely on 35 USC §120. If this understanding is incorrect, please advise. Please note that the priority is properly identified on the Official Filing Receipt of July 23, 2001, i.e., the application is a §371 of PCT/GB99/02544 filed August 3, 1999, which in turn claims priority to GB 9816800.8 and GB 9816802.4, both filed August 3, 1998.

3. Information Disclosure Statement

A new Information Disclosure Statement (with references and fee) is being mailed concurrently with the transmission of this Response. A copy is provided with this Response for your convenience. Kindly consider the references noted therein in all further actions.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,223	05/07/2001	Antony Walter Anson	78014.018	2854

7590

09/04/2003

Dewitt Ross & Stevens
8000 Excelsior Drive Suite 101
Madison, WI 53717-1914

EXAMINER

ROBERTS, PAUL A

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action

Application No.

09/762,223

Applicant(s)

ANSON ET AL.

Examiner

Paul A Roberts

Art Unit

3731

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 19 February 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
 2. ☒ The proposed amendment(s) will not be entered because:
 (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ they raise the issue of new matter (see Note below);
 (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
 4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
 7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 62.

Claim(s) rejected: 51-61, 63-70.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
 9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
 10. ☐ Other: _____

MICHAEL J. MILANO
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 3700

Continuation Sheet (PTOL-303)
09/762,228

Application No.

Continuation of 2. NOTE: The additional limitations would require further consideration of the cited references and another search.